IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9810 OF 2004

Shri vithal Malhari Kadam & Anr. ...Petitioners.

Vs.

Balasaheb Appaji Deokate & Ors. ...Respondents.

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V.Y.Jadhav for the Petitioners.

Mr.Hement Ghodgaonkar for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

April 13, 2005.

P.C. :

In an appeal against a decree in a suit for specific performance, the First Appellate Court has taken on record, an undertaking of the First and Second Respondents, the original Plaintiffs, that the decree for specific performance shall not be executed during the pendency of the appeal. The First Appellate Court has directed that the undertaking shall remain in force till the disposal of the appeal. In clause (iv) of the operative

order of the Trial Court dated 21st October 2003, there was a direction to refund certain amounts to the Plaintiffs and similarly in clause (vi), the Plaintiffs have been permitted to withdraw the amount that was deposited in the Court towards the price of the wheat crop. Counsel appearing on behalf of the First and Second Respondents who are the original Plaintiffs, states in fairness that the Plaintiffs shall not pending the appeal seek a refund of the amount reflected in clause (iv) of the operative order of the Trial Court and similarly, that the Plaintiffs shall not withdraw the amount as reflected in operative clause (vi). In view of the aforesaid statement, no further directions are necessary. The Trial Court has found that possession is with the Plaintiffs and has also noted that this was in accordance with the report of the Commissioner. The Petitioners would be at liberty to take recourse to their remedies in the event that there is any breach of the undertaking furnished to the First Appellate Court. No further directions are necessary. The Petition is accordingly disposed of.

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